

* Appendix

-1729

Barman, Mike

From: Hanaman, Cathlene
Sent: Friday, March 21, 2003 4:15 PM
To: Barman, Mike
Subject: LRB-2381 Compile List

LRB-2381/1 was a compile (the compile list is in the electronic folder).

Also, -1729 was incorporated into that compile.
So those guts should go into the folder too.

Enter *Latest* Date to retrieve in This Inline Component → 01/01/2020

Leave this component in document if you wish to retrieve Bill Drafts

Leave this component in document if you wish to retrieve DOA Bill Drafts

Leave this component in document if you wish to retrieve Amendments

Leave this component in document if you wish to retrieve LFB Amendment Drafts

03-1423

03-1424

03-1425

03-1426

03-1427

03-1428

The "guts" for this draft
Where transferred to LRB-2381 /1

03-24-2003 per MDK

2003 DRAFTING REQUEST

Bill

Received: **01/24/2003**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Steven Foti (608) 266-2401**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - prof lic**

Extra Copies: **MDK**

Submit via email: **YES**

Requester's email: **Rep.Foti@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unprofessional conduct by chiropractors

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 03/07/2003	csicilia 03/07/2003					
/P1	phurley 03/21/2003	csicilia 03/21/2003	chaskett 03/07/2003		amentkow 03/07/2003		
/P2			rschluet		amentkow		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			03/21/2003 _____		03/21/2003		

FE Sent For:

<END>

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/?	phurley 03/07/2003	csicilia 03/07/2003		<u> </u> <u> </u>			
/P1			chaskett 03/07/2003	<u> </u> <u> </u>	amentkow 03/07/2003		

pr gs 3/21/03
[Signature]
3-21-03

FE Sent For:

<END>

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1?	phurley	1/1/03 3/7	P1 CPH 3/7	CJS/CPH 3/7			

FE Sent For:

<END>

(4)
P/M

Peer Review

Peer review definition

"Peer review" means an evaluation, based upon generally accepted standards, by a peer review panel established under Wi Stat _____ of the appropriateness, quality, and utilization of chiropractic health care provided to a patient.

"Evaluation" means a finding in favor of the treating chiropractor or the patient.

"Accepted standards" means those standards of diagnosis, care, skill and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

"Appropriateness" means a determination made of the treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.

"Utilization" means appropriate treatment or services rendered, including the frequency and duration of the treatment or services, which are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

"Patient" means an individual who receives treatment from a chiropractor, or who has received treatment under the supervision, direction, or delegation of a chiropractor.

Scope of Peer Review

? The purpose of the peer review panel is to deal with the potential discipline of a chiropractor. Peer review decisions may not be used by any party for reimbursement purposes.

? The peer review panel may consider any case in which the chiropractic examining board, the patient's insurer, or the treating chiropractor would like a determination on

- The appropriateness of the chiropractic services rendered to the patient.
- The quality of the chiropractic services rendered to the patient.
- The utilization of the chiropractic services rendered to the patient
- The professional conduct of the chiropractor rendering service to the patient.

Appointment of Peer Review Panel

? The board of examiners may conduct a peer review by acting as a peer review panel or shall appoint peer review members.

Peer review members shall be selected from a list of nominees submitted every 24 months by the Wisconsin Chiropractic Association base on the criteria established in Wi stat. _____. In the event the Wisconsin Chiropractic Association does not submit nominees for the peer review panel, the examining panel shall solicit nominations for the peer review panel through an application process developed by the department and shall select panel members based on the criteria established in Wi stat. _____.

The peer review panel shall have a minimum of six and a maximum of twelve members.

A peer review may only be conducted when the amount in dispute for a course of treatment injury exceeds \$500.

Qualifications to serve on peer review

- a • Current valid Wisconsin license and
- b • 10 years in practice at a minimum of 20 hrs per week in preceding 2 years. A chiropractor who is not currently in active clinical practice due to disability may perform peer reviews if he or she was in active clinical practice for at least five (5) years prior to the onset of his or her disability and,
- c • Must be diplomate eligible in a specialty requiring at least 300 hours of postgraduate credit hours approved by the American Chiropractic Association or the International Chiropractors Association and,
- d • Have no history of disciplinary sanctions taken or pending by the chiropractic examining board or another regulatory body or by any government and,
- e • Annual completion of a board approved utilization review course and,
- f • A peer reviewer appointed by the department to conduct a peer review may not have had a material professional, familial or financial interest during the 12 months preceding the review with any of the following:
 - The insurer that issued the health benefit plan that is the subject of the peer review and,
 - Any officer, director or management employee of the insurer that issued the health benefit plan that is the subject of the peer review and,
 - The chiropractor that provided the health care service or treatment that is the subject of the peer review, or the health care provider's practice group or service corporation and,
 - The facility at which the health care service or treatment that is the subject of the peer review was provided and,
 - The patient whose care is the subject of the review.

Procedure

To request a peer review the ^{patient's} treating chiropractor, the patient's insurer, or the chiropractic examining board shall provide a written notice of the request for a peer review to the Department of Regulation & Licensing. The chiropractor or the patient's insurer is charged a fee of \$250.00 for a peer review. The fee is increased annually based on the Consumer Price Index.

Within 5 business days after requesting a peer review, the chiropractic examining board, the patient's insurer, or the treating chiropractor shall submit to the Department of Regulation & Licensing copies of all of the following:

- Any information in support of their position and,
- All clinical documentation relating to the course of treatment upon which a determination is to be made.

Within 10 business days of being notified by the Department of Regulation and Licensing that a peer review is to be conducted, the chiropractor whose treatment is the subject of the peer review shall submit to the department a complete set of clinical documentation and/or any other relevant documentation for the patient whose treatment is to be reviewed by the peer review panel.

The identity of the treating chiropractor shall be removed by the department and unknown to the reviewer.

Within 5 days of receiving the information from the chiropractic examining board, the patient's insurer, or the treating chiropractor, the Department of Regulation & Licensing shall submit the information to the peer reviewer/s chosen by the department under _____.

A peer review may not include appearances by the insurer, the treating chiropractor, or the patient.

The peer reviewer/s shall, within 30 business days after receiving the information from the department, make a determination on the basis of the documents and information submitted. The determination shall be in writing, signed with the reviewer's name and address and served by personal delivery or by mailing a copy to the department.

In peer reviews involving:

- The appropriateness of the chiropractic services rendered to the patient.
- The quality of the chiropractic services rendered to the patient.
- The utilization of the chiropractic services rendered to the patient

An adverse determination shall be rendered if 50% of the chiropractic services in dispute is found to be inappropriate, unnecessary or of substandard quality.

In peer reviews involving the professional conduct of the chiropractor rendering service to the patient an adverse determination shall be rendered if a reasonably prudent chiropractor under similar conditions and circumstances finds the conduct of the chiropractor to be unprofessional.

Appeals

If the chiropractic examining board, the treating chiropractor, or the patient's insurer desire to appeal the decision of a peer reviewer, the party must notify the department with their request and pay a fee of \$750. The department shall appoint a panel of three new reviewers each of which shall conduct an independent evaluation and report the decision to the department. The decision will be that adopted by the majority of this three person panel. There shall be no further right to an appeal. The decision of the three person panel is not subject to appeal.

Immunization from civil liability

In the absence of fraud, conspiracy, or malice, a member of the peer review panel is immune from civil liability for a finding, evaluation, recommendation, or other action made or taken as a member of the panel.

Selection of the peer reviewer

Reviews shall be conducted by one reviewer to be chosen at random from the panel.

Payment

The chiropractor conducting the peer review shall be paid a fee of \$235 for each peer review conducted. The fee is increased annually based on the Consumer Price Index.

Suspension

The chiropractic examining board may summarily suspend a chiropractor from the peer review panel if the board finds that the reviewer is unqualified or if the reviewer methods or practices are found by the board to be unprofessional.

241 6

Sexual Conduct

Unprofessional conduct is further defined to mean engaging in sexual contact, exposure, gratification, sexually offensive communication, dating a patient under treatment, or other sexual behavior with or in the presence of a patient.

A non-contact violation is defined to mean any sexual exposure, gratification, sexually offensive communication, or other sexual behavior that does not involve physical contact with the patient.

A contact violation is defined to mean any sexual contact, exposure, gratification, or other sexual behavior that involves physical contact with the patient.

Discipline

Non-contact violations

First violation - 3 month suspension of chiropractic license and mandatory boundary training.

Second violation - 1 yr suspension of license. No contact with practice allowed during suspension.

Third violation - Permanent revocation of chiropractic license

Contact violations

First violation - 1 yr suspension of license. No contact with practice allowed during suspension.

Second violation - Permanent revocation of chiropractic license

PJM (5)

Unprofessional Conduct

"Pattern of conduct" means more than a single occurrence.

446.04 Unprofessional conduct. Unprofessional conduct includes, without limitation because of enumeration:

446.04(1) Any conduct of a character likely to deceive or defraud the public;

446.04(2) Loaning of a chiropractic license or certificate to anyone;

446.04(4) Splitting or dividing any fee for chiropractic service with any person except an associate licensed chiropractor;

446.04(5) Use of unprofessional advertising which shall include without limitation because of enumeration:

446.04(5)(a) Any advertising statement of a character tending to deceive or mislead the public;

446.04(5)(b) Advertising professional superiority or performance of professional services in a superior manner.

- **Billing for a service which was performed by a staff person without the training required under Wi. Stat. 446.02 (7)(b), 441.11 (3), 441.11 (4), and Wi. Admin. Code Chir 10.**
- **Billing for services that were not performed.**
- **Except in cases of the documented financial hardship of a patient, the use of "no out-of-pocket expense arrangements" in which a chiropractor does not collect the deductibles and co-payments required by a patient's insurance company.**
- **Falsifying the type of claim for the purpose of obtaining increased reimbursement for the provider or the patient.**
- **A pattern of conduct in which a chiropractor bills for more units of a service than were actually performed with the intent of obtaining unearned reimbursement.**
- **A pattern of conduct in which a chiropractor improperly bills a Current Procedural Terminology code (CPT) without written support from CPT®, The CPT Assistant®, the Wisconsin Chiropractic Association, the American Chiropractic Association, or the International Chiropractic Association.**
- **Pattern of conduct in which a chiropractor bills for services using a higher level CPT code than the service that was actually provided to the patient with the intent of obtaining unearned reimbursement.**
- **The determination by the peer review committee as defined in s. _____ that services or treatment were inappropriate, unnecessary or of substandard quality.**

Discipline

The first and second findings of unprofessional conduct shall be treated under the department of regulation & licensing's current disciplinary standards.

Upon the third and subsequent finding of unprofessional conduct the license of the chiropractor shall be suspended by the department for a minimum of six months.

relationship between
peer review &
discipline



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1729/4

PJH:.....

TODAY

y's

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ray ✓
def ✓

Ger cat

1 AN ACT ~~relating to~~; relating to: unprofessional conduct by chiropractors.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 446.01 (1d) of the statutes is created to read:

3 446.01 (1d) "Generally accepted standards" means a level of diagnosis, care,
4 skill, and treatment that are recognized by a reasonably prudent chiropractor as
5 being appropriate under similar conditions and circumstances. ✓

6 SECTION 2. 446.01 (1k) of the statutes is created to read:

7 446.01 (1k) "Patient" means an individual who receives treatment or services
8 from a chiropractor, or who has received treatment or services under the supervision,
9 direction, or delegation of a chiropractor.

S. 446.035

LRB-1729?

PJH:.....

SECTION 3

SECTION 3. 446.01 (1m) of the statutes is created to read:

446.01 (1m) "Peer review" means an evaluation based on generally accepted standards, by a peer review panel appointed under sub. (2) of the appropriateness, quality, and utilization of chiropractic health care provided to a patient.

SECTION 4. 446.01 (3) of the statutes is created to read:

446.01 (3) "Utilization" means the treatment or services provided to a patient, including the frequency and duration of the treatment or services.

SEC# CR: 446.035

446.035 Peer review. (1) APPOINTMENT OF PEER REVIEW PANEL. (a) The

examining board may act as a peer review panel or may appoint a peer review panel of no fewer than 6 nor more than 12 members, pursuant to sub. (b).

(b) A peer review panel may be selected from a list of nominees that is submitted every 24 months by the Wisconsin Chiropractic Association. If the Wisconsin Chiropractic Association fails to submit a list of nominees, the examining board may solicit nominations for the peer review panel pursuant to a process developed by the department.

(c) A nominee under sub. (b) shall

1. Possess a valid license to practice chiropractic in this state.

2. Have no less than 10 years in practice for a minimum of 20 hours per week within the preceding 2 years of his or her nomination for the peer review panel or, if the nominee is not in active practice at the time of his or her nomination due to a disability, have at least 5 years of practice for a minimum of 20 hours per week prior to the onset of his or her disability.

3. Be diploma eligible in a specialty that requires at least 300 hours of postgraduate credit hours approved by the American Chiropractic Association or the International Chiropractors Association.

meet
all of the
following
requirements

to reflect adjustments to the U.S. consumer price index for all consumers, U.S. city average, as determined by the U.S. department of labor.

4. Not have been subject to disciplinary action under this chapter or by any regulatory or government agency. ✓

5. Have completed an annual review course prepared and approved by the examining board. ✓

(2) PROCEDURE. (a) A patient, a chiropractor, an insurer, or the examining board may request a peer review by submitting a written request to the department and any fee required under par. (b). Within 5 business days of submitting the request, the patient, chiropractor, insurer, or examining board shall submit the following documents to the department: ✓

1. A written statement of the matter he or she wishes to be reviewed. ✓
2. Clinical documentation relating to the course of treatment. ✓
3. Any other information the patient, chiropractor, insurer, or examining board wishes to include to support his or her request for review. ✓

(b) The department shall charge a chiropractor or an insurer a requesting fee of \$250. The department shall adjust the fee each year in accordance with the

~~Consumer Price Index~~

specified

(c) Upon receipt of the documents and fee required under par. (a), the department shall notify each patient, chiropractor, or insurer named in the request for review. Within 10 business days of receiving notification that a review has been requested, the patient, chiropractor, or insurer shall submit the following to the department:

1. A written statement of response to the matter that is being reviewed. ✓
2. Clinical documentation relating to the course of treatment. ✓
3. Any other information the patient, chiropractor, or insurer wishes to include to support his or her response. ✓

par.
(d) The department shall remove identifying information regarding a chiropractor named in the request for review and, within 5 business days of receipt, shall forward all of the documents received under pars. (a) and (c) and payment of \$235 to a peer reviewer chosen at random from the peer review panel. A peer reviewer chosen under this paragraph or paragraph (g) may not have a material professional, familial, or financial interest during the 12 months preceding his or her performance as a peer reviewer ^{relating} to a patient, chiropractor, insurer, or any agent or affiliate of a patient, chiropractor, or insurer named or involved in the peer review request.

(e) Within 30 business days of receiving the information ^{documents} specified in par. (d), the peer reviewer shall make a determination of the quality, appropriateness, and utilization of the chiropractic services rendered to the patient. The peer reviewer shall determine that the chiropractor acted unprofessionally if he or she finds that, applying generally accepted standards, 50% or more of the chiropractic services identified in the request for peer review were inappropriate, unnecessary, or of substandard quality. The peer reviewer shall remit his or her findings to the department and the department shall issue a copy of the findings to each patient, chiropractor, ^{stat: leave as typed} ~~or insurer~~ named in the request ~~for peer review~~.

(f) Upon receipt of the peer reviewer's findings, a patient, chiropractor, insurer, or the examining board ^{and to the examining board} may request an appeal. The person requesting the appeal shall submit a written request to the department and pay a fee of \$750.

(g) Upon receipt of a request for appeal and the fee set forth ^{as specified} in par. (f), the department shall forward all of the documents received under pars. (a), (c) and (e) and a payment of \$235 each to ³peer reviewers chosen at random from the peer review panel. Each peer reviewer shall conduct his or her own review of the additional

SECTION 4

Each peer reviewer shall determine that the chiropractor acted unprofessionally if he or she finds that, applying generally accepted standards, 50% or more of the chiropractic services identified in the request for peer review were inappropriate, unnecessary, or of substandard quality.

submitted materials, and each peer reviewer shall remit his or her findings to the department. The department shall forward a copy of each review to each patient, chiropractor, or insurer named in the request for peer review. The department shall adopt the determination reached by two of the three peer reviewers appointed under this paragraph of the of the quality, appropriateness, and utilization of the chiropractic services rendered to the patient.

(3) A member of a peer review panel is immune from civil liability for a finding, evaluation, recommendation, or other action he or she makes or takes while performing a peer review under this subsection. This paragraph does not apply if the member of the peer review panel acts in fraud, conspiracy, or malice.

(4) No finding, evaluation, or recommendation reached by a peer reviewer may be used to determine whether insurance coverage or reimbursement is appropriate.

SECTION 5. 446.03 (intro.) of the statutes is amended to read:

446.03 Reprimand; license revocation, limitation or suspension.

(intro.) The Except as provided in s. 446.04 (11) (d), the examining board, by order, may reprimand a licensee or registrant and may deny, limit, suspend or revoke any license or certificate of registration if the licensee or registrant:

History: 1977 c. 29, 125, 418; 1981 c. 334 s. 25 (1); 1981 c. 380; 1983 a. 289; 1991 a. 39.

SECTION 6. 446.04 (6), (7), (8), (9), (10), (11) and (12) of the statutes are created to read:

446.04 (6) A determination under s. 446.035 that 50% or more of the chiropractic services identified in a request for peer review were inappropriate, unnecessary, or of substandard quality.

(7) Billing for a service that was performed by a staff person without the training required under s. 446.02 (7) (b), 441.11 (3), or (4) of the statutes.

3 (B)

(A) Billing for a service that was not performed. ✓

4 (B) (B)

(A) Failure to collect a deductible or co-payment required by a patient's insurer. ✓

This subsection does not apply if the patient has financial hardship and the chiropractor documents the financial hardship. ~~xxx wording~~

5 (A) (B)

(A) Falsifying a claim. ✓

keep period

6 (A) (B)

(A) A pattern of conduct that involves billing for a unit of service that was not actually performed with the intent of obtaining unearned reimbursement. ✓

7 (A) (B)

(A) Sexual misconduct. (a) Under this subsection, a chiropractor engages in sexual misconduct if he or she engages in sexual contact, exposure, ^{or} gratification, sexually offensive communication, dating a patient under the chiropractor's professional care or treatment, or other sexual behavior with or in the presence of a patient under the chiropractor's professional care or treatment.

(b) Under this subsection, a "contact violation" means any violation of par. (a) that involves physical contact with a patient under the chiropractor's professional care or treatment.

(c) Under this subsection, a "non-contact violation" means any violation of par.

(a) that does not involve physical contact with a patient under the chiropractor's professional care or treatment.

(d) 1. The examining board shall require a chiropractor who commits a first violation under this subsection to attend training developed by the department regarding sexual misconduct and shall suspend his or her chiropractic license for not less than 90 days.

2. The examining board shall suspend the chiropractic license of a chiropractor who commits a second violation under this subsection for one year.

2nd non-contact violation or a first contact

1 3. The examining board shall revoke the chiropractic license of a chiropractor
2 who commits a third violation under this subsection.

3 SECTION 7. 446.05 (1) of the statutes is amended to read:

4 **446.05 Procedure for hearings.** (1) Subject to the rules promulgated under
5 s. 440.03 (1), the examining board may make investigations and conduct hearings
6 in regard to the conduct of any licensed chiropractor who, it has reason to believe,
7 violated s. 446.02 or 446.03 (1), (6), (7), (7m), or (8) or any offense listed in s. 446.03.

8 The person complained against may proceed to review any action of the examining
9 board under ch. 227.

10 History: 1977 c. 418; 1997 a. 191, 237.

(END)

1 **SECTION 3.** 446.01 (1m) of the statutes is created to read:

2 446.01 (1m) "Peer review" means an evaluation based on generally accepted
3 standards, by a peer review panel appointed under s. 446.035 (1), of the
4 appropriateness, quality, and utilization of chiropractic health care provided to a
5 patient. *OR THE PROFESSIONAL CONDUCT OF A CHIROPRACTOR AS DEFINED*
UNDER 446.04 (11) add in.

6 **SECTION 4.** 446.01 (3) of the statutes is created to read:

7 446.01 (3) "Utilization" means the treatment or services provided to a patient,
8 including the frequency and duration of the treatment or services.

9 **SECTION 5.** 446.03 (intro.) of the statutes is amended to read:

10 **446.03 Reprimand; license revocation, limitation or suspension.**

11 (intro.) The Subject to s. 446.04 (11) (d). the examining board, by order, may
12 reprimand a licensee or registrant and may deny, limit, suspend or revoke any license
13 or certificate of registration if the licensee or registrant:

14 **SECTION 6.** 446.035 of the statutes is created to read:

15 **446.035 Peer review.** (1) APPOINTMENT OF PEER REVIEW PANEL. (a) The
16 examining board *shall* ~~may~~ *act as a peer review panel or may* ~~may~~ *appoint a peer review panel* *shall*
17 of no fewer than 6 nor more than 12 members, pursuant to par. (b).

18 (b) A peer review panel may be selected from a list of nominees that is
19 submitted every 24 months by the Wisconsin Chiropractic Association. If the
20 Wisconsin Chiropractic Association fails to submit a list of nominees, the examining
21 board may solicit nominations for the peer review panel pursuant to a process
22 developed by the department.

23 (c) A nominee under pa. (b) shall meet all of the following requirements:

24 1. Possess a valid license to practice chiropractic in this state.

2. Have no less than 10 years in practice for a minimum of 20 hours per week within the preceding 2 years of his or her nomination for the peer review panel or, if the nominee is not in active practice at the time of his or her nomination due to a disability, have at least 5 years of practice for a minimum of 20 hours per week prior to the onset of his or her disability.

3. Be diploma eligible in a specialty that requires at least 300 hours of postgraduate credit hours approved by the American Chiropractic Association or the International Chiropractors Association.

4. Not have been subject to disciplinary action under this chapter or by any regulatory or government agency.

5. Have completed an annual ^{UTILIZATION} review course ~~prepared and~~ ^{add in} approved by the examining board.

(2) PROCEDURE. (a) A patient, a chiropractor, an insurer, or the examining board may request a peer review by submitting a written request to the department and any fee required under par. (b). Within 5 business days of submitting the request, the patient, chiropractor, insurer, or examining board shall submit the following documents to the department:

1. A written statement of the matter he or she wishes to be reviewed.

2. Clinical documentation relating to the course of treatment he or she wishes to be reviewed.

3. Any other information the patient, chiropractor, insurer, or examining board wishes to include to support his or her request for review.

(b) The department shall charge a chiropractor or an insurer a requesting fee of \$250. The department shall adjust the fee each year to reflect adjustments to the

add in where it fits
A PEER REVIEW TO ~~BE~~ EVALUATE THE UTILIZATION OF CHIROPRACTIC CARE MAY NOT BE REQUESTED UNLESS THE AMOUNT OF CARE IN DISPUTE FOR A COURSE OF TREATMENT EXCEEDS \$500.

1 U.S. consumer price index for all consumers, U.S. city average, as determined by the
2 U.S. department of labor.

3 (c) Upon receipt of the documents and fee specified under par. (a), the
4 department shall notify each patient, chiropractor, or insurer named in the request
5 for review. Within 10 business days of receiving notification that a review has been
6 requested, the patient, chiropractor, or insurer shall submit the following to the
7 department:

8 1. A written statement of response to the matter that is being reviewed.

9 2. Clinical documentation relating to the course of treatment that is being
10 reviewed.

11 3. Any other information the patient, chiropractor, or insurer wishes to include
12 to support his or her response.

13 (d) The department shall remove identifying information regarding a
14 chiropractor named in the request for review and, within 5 business days of receipt,
15 shall forward all of the documents received under pars. (a) and (c) and payment of
16 \$235 to a peer reviewer chosen at random from the peer review panel. A peer
17 reviewer chosen under this paragraph or par. (g) may not have a material
18 professional, familial, or financial interest during the 12 months preceding his or her
19 performance as a peer reviewer relating to a patient, chiropractor, insurer, or any
20 agent or affiliate of a patient, chiropractor, or insurer named or involved in the peer
21 review request.

22 (e) Within 30 business days of receiving the documents specified in par. (d), the
23 peer reviewer shall make a determination of the quality, appropriateness, ~~and~~ OR
24 utilization of the chiropractic services rendered to the patient. The peer reviewer
25 shall determine that the chiropractor acted unprofessionally if he or she finds that,

THE DEPARTMENT SHALL ADJUST THE FEE EACH YEAR TO REFLECT ADJUSTMENTS
TO THE U.S. CONSUMER PRICE INDEX FOR ALL CONSUMERS, U.S. CITY AVERAGE, AS
DETERMINED BY THE U.S. DEPARTMENT OF LABOR.

1 applying generally accepted standards, 50% or more of the chiropractic services
2 identified in the request for peer review were inappropriate, unnecessary, or of
3 substandard quality. The peer reviewer shall remit his or her findings to the
4 department and the department shall issue a copy of the findings to each patient,
5 chiropractor, or insurer named in the request and to the examining board.

6 (f) Upon receipt of the peer reviewer's findings, a patient, chiropractor, insurer,
7 or the examining board may request an appeal. The person requesting the appeal
8 shall submit a written request to the department and pay a fee of \$750.

9 (g) Upon receipt of a request for appeal and the fee specified in par. (f), the
10 department shall forward all of the documents received under pars. (a), (c), and (e)

11 and a payment of \$235 each to 3 additional peer reviewers chosen at random from
12 the peer review panel. Each peer reviewer shall conduct ^{INSECT INCREASE LANGUAGE} ~~his or her own~~ ^{JOINTLY} ~~review~~ ^A of the

13 submitted materials. Each peer reviewer shall determine that the chiropractor acted
14 unprofessionally if he or she finds that, applying generally accepted standards, 50%

15 or more of the chiropractic services identified in the request for peer review were
16 inappropriate, unnecessary, or of substandard quality. Each peer reviewer shall

17 remit his or her findings to the department. ^{SIGNED WITH THE REVIEWERS NAME AND ADDRESS} The department shall forward a copy

18 of each review [↑] to each patient, chiropractor, or insurer named in the request for peer
19 review. The department shall adopt the determination reached by ^{a majority?} (2 of the 3) peer

20 reviewers appointed under this paragraph of the of the quality, appropriateness, AND
21 utilization of the chiropractic services rendered to the patient. ^{OR THE PROFESSIONAL CONDUCT OF THE CHIROPRACTOR}

22 (3) CIVIL LIABILITY. A member of a peer review panel is immune from civil
23 liability for a finding, evaluation, recommendation, or other action he or she makes
24 or takes while performing a peer review under this section. This paragraph does not
25 apply if the member of the peer review panel acts in fraud, conspiracy, or malice.

THE INSURER, CHIROPRACTOR OR PATIENT MAY NOT APPEAR BEFORE THE
PEER REVIEWER OR PEER REVIEW PANEL. ^{AND IN}

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(4) INSURANCE COVERAGE. No finding, evaluation, or recommendation reached by a peer reviewer may be used to determine whether insurance coverage or reimbursement is appropriate.

SECTION 7. 446.04 (6), (7), (8), (9), (10) and (11) of the statutes are created to read: *in A PATTERN OF CONDUCT MEANS MORE THAN A SINGLE OCCURRENCE*

446.04 (6) A determination under s. 446.035 that 50% or more of the chiropractic services identified in a request for peer review were inappropriate, unnecessary, or of substandard quality.

(7) Billing for a service that was not performed.

(8) Failure to collect a deductible or co-payment required by a patient's insurer.

This subsection does not apply if the patient has financial hardship and the chiropractor documents the financial hardship.

(9) Falsifying a claim.

(10) A pattern of conduct that involves billing for ~~a unit of service that was not~~ *MORE UNITS OF A SERVICE THAN WERE* actually performed with the intent of obtaining unearned reimbursement. *change* *this includes?*

(11) Sexual misconduct. (a) Under this subsection, a chiropractor engages in sexual misconduct if he or she engages in sexual contact, exposure, or gratification, sexually offensive communication, dating a patient under the chiropractor's professional care or treatment, or other sexual behavior with or in the presence of a patient under the chiropractor's professional care or treatment.

(b) Under this subsection, "contact violation" means any violation of par. (a) that involves physical contact with a patient under the chiropractor's professional care or treatment.

BILLING FOR A SERVICE WHICH WAS PERFORMED BY A STAFF PERSON WITHOUT THE TRAINING REQUIRED UNDER WI STAT 446.02(7)(b), 441.11(3), 441.11(4) AND WI ADM CODE CHIR 10.

A PATTERN OF CONDUCT IN WHICH A CHIROPRACTOR BILLS A CURRENT PROCEDURAL TERMINOLOGY CODE (CPT) IN A MANNER INCONSISTENT WITH THE PUBLISHED STANDARD CPT (C) THE CPT ASSISTANT (C), THE WISCONSIN CHIROPRACTIC ASSN, THE AMERICAN CHIROPRACTIC ASSOCIATION OR THE INTERNATIONAL CHIROPRACTIC ASSOCIATION,

A PATTERN OF CONDUCT IN WHICH A CHIROPRACTOR BILLS FOR SERVICES USING A HIGHER LEVEL CPT CODE THAN THE SERVICE THAN WAS ACTUALLY PROVIDED TO THE PATIENT WITH THE INTENT OF OBTAINING UNEARNED REIMBURSEMENT.

*just a CPT
code
shortened*

(c) Under this subsection, "noncontact violation" means any violation of par. (a) that does not involve physical contact with a patient under the chiropractor's professional care or treatment.

(d) 1. The examining board shall require a chiropractor who commits a first noncontact violation under this subsection to attend training developed by the department regarding sexual misconduct and shall suspend his or her chiropractic license for not less than 90 days.

2. The examining board shall suspend the chiropractic license of a chiropractor who commits a 2nd noncontact violation or a first contact violation under this subsection for one year.

3. The examining board shall revoke the chiropractic license of a chiropractor who commits a 3rd noncontact or a 2nd contact violation under this subsection.

SECTION 8. 446.05 (1) of the statutes is amended to read:

446.05 Procedure for hearings. (1) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to the conduct of any licensed chiropractor who, it has reason to believe, violated s. 446.02 or 446.03 (1), (6), (7), (7m), or (8) or committed any offense listed

in s. 446.03. The person complained against may proceed to review any action of the examining board under ch. 227.

THE CHIROPRACTIC EXAMINING BOARD MAY SUMMARILY SUSPEND A CHIROPRACTOR FROM THE PEER REVIEW PANEL IF THE BOARD FINDS THAT THE REVIEWER IS UNQUALIFIED OR IF THE REVIEWER'S METHODS OR PRACTICES ARE FOUND BY THE BOARD TO BE UNPROFESSIONAL. (END)

A DETERMINATION UNDER THIS SECTION SHALL BE RENDERED IF A REASONABLY PRUDENT CHIROPRACTOR UNDER SIMILAR CONDITIONS AND CIRCUMSTANCES FINDS THE CONDUCT TO BE UNPROFESSIONAL.

THE CHIROPRACTIC EXAMINING BOARD SHALL SUSPEND THE CHIROPRACTIC LICENSE OF A CHIROPRACTOR WHO COMMITS A THIRD VIOLATION OF UNPROFESSIONAL CONDUCT UNDER S. 446 (04) (1) - NOT LESS THAN SIX MONTHS.

FOR

and except for the sex assault stuff

446.04 (1) (a)

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Now

Ref cat

1 AN ACT *to amend* 446.03 (intro.) and 446.05 (1); and *to create* 446.01 (1d),
2 446.01 (1k), 446.01 (1m), 446.01 (3), 446.035 and 446.04 (6), (7), (8), (9), (10) and
3 (11) of the statutes; **relating to:** unprofessional conduct by chiropractors.

Insert A

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 446.01 (1d) of the statutes is created to read:

5 446.01 (1d) "Generally accepted standards" means a level of diagnosis, care,
6 skill, and treatment that is recognized by a reasonably prudent chiropractor as being
7 appropriate under similar conditions and circumstances.

8 **SECTION 2.** 446.01 (1k) of the statutes is created to read:

9 446.01 (1k) "Patient" means an individual who receives treatment or services
10 from a chiropractor or who has received treatment or services under the supervision,
11 direction, or delegation of a chiropractor.

Insert B

1 **SECTION 3.** 446.01 (1m) of the statutes is created to read:

2 446.01 (1m) "Peer review" means an evaluation based on generally accepted
3 standards, by a peer review panel appointed under s. 446.035 (1), of the
4 appropriateness, quality, and utilization of chiropractic health care provided to a
5 patient *or the professional conduct of a chiropractor as defined by s. 446.04(11)*

6 **SECTION 4.** 446.01 (3) of the statutes is created to read:

7 446.01 (3) "Utilization" means the treatment or services provided to a patient,
8 including the frequency and duration of the treatment or services.

9 **SECTION 5.** 446.03 (intro.) of the statutes is amended to read:

10 **446.03 Reprimand; license revocation, limitation or suspension.**

11 (intro.) The Subject to s. 446.04 (11) (d), the examining board, by order, may
12 reprimand a licensee or registrant and may deny, limit, suspend or revoke any license
13 or certificate of registration if the licensee or registrant:

14 **SECTION 6.** 446.035 of the statutes is created to read:

15 **446.035 Peer review. (1) APPOINTMENT OF PEER REVIEW PANEL.** (a) The
16 examining board *may act as a peer review panel or may* appoint a peer review panel *shall*
17 of no fewer than 6 nor more than 12 members, pursuant to par. (b).

18 (b) A peer review panel may be selected from a list of nominees that is
19 submitted every 24 months by the Wisconsin Chiropractic Association. If the
20 Wisconsin Chiropractic Association fails to submit a list of nominees, the examining
21 board may solicit nominations for the peer review panel pursuant to a process
22 developed by the department.

23 (c) A nominee under pa. (b) shall meet all of the following requirements:

24 1. Possess a valid license to practice chiropractic in this state.

1 2. Have no less than 10 years in practice for a minimum of 20 hours per week
2 within the preceding 2 years of his or her nomination for the peer review panel or,
3 if the nominee is not in active practice at the time of his or her nomination due to a
4 disability, have at least 5 years of practice for a minimum of 20 hours per week prior
5 to the onset of his or her disability.

6 3. Be diploma eligible in a specialty that requires at least 300 hours of
7 postgraduate credit hours approved by the American Chiropractic Association or the
8 International Chiropractors Association.

9 4. Not have been subject to disciplinary action under this chapter or by any
10 regulatory or government agency.

11 5. Have completed an annual ^{utilization} review course ~~prepared and~~ approved by the
12 examining board.

Insert C
13 (2) PROCEDURE. (a) A patient, a chiropractor, an insurer, or the examining
14 board may request a peer review by submitting a written request to the department
15 and any fee required under par. (b). Within 5 business days of submitting the
16 request, the patient, chiropractor, insurer, or examining board shall submit the
17 following documents to the department:

- 18 1. A written statement of the matter he or she wishes to be reviewed
- 19 2. Clinical documentation relating to the course of treatment ^{or the professional} he or she wishes
20 to be reviewed.
- 21 3. Any other information the patient, chiropractor, insurer, or examining board
22 wishes to include to support his or her request for review.

23 (b) The department shall charge a chiropractor or an insurer a requesting fee
24 of \$250. The department shall adjust the fee each year to reflect adjustments to the

, if the cost of the care in dispute for a course of treatment exceeds \$500,

U.S. consumer price index for all consumers, U.S. city average, as determined by the U.S. department of labor.

(c) Upon receipt of the documents and fee specified under par. (a), the department shall notify each patient, chiropractor, or insurer named in the request for review. Within 10 business days of receiving notification that a review has been requested, the patient, chiropractor, or insurer shall submit the following to the department:

1. A written statement of response to the matter that is being reviewed.

2. Clinical documentation relating to the course of treatment, that is being reviewed.

3. Any other information the patient, chiropractor, or insurer wishes to include to support his or her response.

(e) The department shall remove identifying information regarding a chiropractor named in the request for review and, within 5 business days of receipt, shall forward all of the documents received under pars. (a) and (c) and payment of \$235 to a peer reviewer chosen at random from the peer review panel. A peer reviewer chosen under this paragraph or par. (h) may not have a material professional, familial, or financial interest during the 12 months preceding his or her performance as a peer reviewer relating to a patient, chiropractor, insurer, or any agent or affiliate of a patient, chiropractor, or insurer named or involved in the peer review request.

(f) Within 30 business days of receiving the documents specified in par. (e), the peer reviewer shall make a determination of the quality, appropriateness, and utilization of the chiropractic services rendered to the patient. The peer reviewer shall determine that the chiropractor acted unprofessionally if he or she finds that,

the department shall adjust the fee each year to reflect adjustments to the U.S. consumer price index for all consumers, U.S. city average, as determined by the U.S. department of labor.

1 applying generally accepted standards, 50% or more of the chiropractic services
2 identified in the request for peer review were inappropriate, unnecessary, or of
3 substandard quality. The peer reviewer shall remit his or her findings to the
4 department and the department shall issue a copy of the findings to each patient,
5 chiropractor, or insurer named in the request and to the examining board.

6 (f) Upon receipt of the peer reviewer's findings, a patient, chiropractor, insurer,
7 or the examining board may request an appeal. The person requesting the appeal
8 shall submit a written request to the department and pay a fee of \$750.

9 (g) Upon receipt of a request for appeal and the fee specified in par. (f), the
10 department shall forward all of the documents received under pars. (a), (c), and
11 and a payment of \$235 each to 3 additional peer reviewers chosen at random from

12 the peer review panel. ~~Each peer reviewer shall conduct his or her own review of the~~
13 submitted materials. Each peer reviewer shall determine that the chiropractor acted
14 unprofessionally if he or she finds that, applying generally accepted standards, 50%
15 or more of the chiropractic services identified in the request for peer review were
16 inappropriate, unnecessary, or of substandard quality. Each peer reviewer shall

17 remit his or her findings to the department. The department shall forward a copy
18 of ~~each~~ ^{the joint} review to each patient, chiropractor, or insurer named in the request for peer
19 review. The department shall adopt the determination reached by 2 of the 3 peer
20 reviewers appointed under this paragraph of the ~~of the~~ ^{quality}, appropriateness, and
21 utilization of the chiropractic services rendered to the patient. ~~or the professional~~
~~conduct of the chiropractor~~

22 (3) CIVIL LIABILITY. A member of a peer review panel is immune from civil
23 liability for a finding, evaluation, recommendation, or other action he or she makes
24 or takes while performing a peer review under this section. This paragraph does not
25 apply if the member of the peer review panel acts in fraud, conspiracy, or malice.

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p. 16

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p. 16

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(4) INSURANCE COVERAGE. No finding, evaluation, or recommendation reached by a peer reviewer may be used to determine whether insurance coverage or reimbursement is appropriate.

SECTION 7. 446.04 (6), (7), (8), (9), (10) ~~and~~ (11) of the statutes are created to read:

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446.04 (6) A determination under s. 446.035 that 50% or more of the chiropractic services identified in a request for peer review were inappropriate, unnecessary, or of substandard quality.

(7) Billing for a service that was not performed. this includes: Insert D ✓

(8) Failure to collect a deductible or co-payment required by a patient's insurer. This subsection does not apply if the patient has financial hardship and the chiropractor documents the financial hardship.

(9) Falsifying a claim.

(10) A pattern of conduct that involves billing for a unit of service that was not actually performed with the intent of obtaining unearned reimbursement.

(11) Sexual misconduct. (a) Under this subsection, a chiropractor engages in sexual misconduct if he or she engages in sexual contact, exposure, or gratification, sexually offensive communication, dating a patient under the chiropractor's professional care or treatment, or other sexual behavior with or in the presence of a patient under the chiropractor's professional care or treatment.

(b) Under this subsection, "contact violation" means any violation of par. (a) that involves physical contact with a patient under the chiropractor's professional care or treatment.

and a reasonably prudent chiropractor under similar conditions and circumstances would find the conduct unprofessional

1 (c) Under this subsection, “noncontact violation” means any violation of par. (a)
2 that does not involve physical contact with a patient under the chiropractor’s
3 professional care or treatment.

4 (d) 1. The examining board shall require a chiropractor who commits a first
5 noncontact violation under this subsection to attend training developed by the
6 department regarding sexual misconduct and shall suspend his or her chiropractic
7 license for not less than 90 days.

8 2. The examining board shall suspend the chiropractic license of a chiropractor
9 who commits a 2nd noncontact violation or a first contact violation under this
10 subsection for one year.

11 3. The examining board shall revoke the chiropractic license of a chiropractor
12 who commits a 3rd noncontact or a 2nd contact violation under this subsection.

13 **SECTION 8.** 446.05 (1) of the statutes is amended to read:

14 **446.05 Procedure for hearings.** (1) Subject to the rules promulgated under
15 s. 440.03 (1), the examining board may make investigations and conduct hearings
16 in regard to the conduct of any licensed chiropractor who, it has reason to believe,
17 violated s. 446.02 or ~~446.03~~ (1), (6), (7), (7m), or (8) or committed any offense listed
18 in s. 446.03. The person complained against may proceed to review any action of the
19 examining board under ch. 227.

20 (END)

Insert E



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1729/P1

PJH:cjs:cph

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS: this ~~is~~
material
should be in
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bill

AN ACT *to amend* 446.03 (intro.) and 446.05 (1); and *to create* 446.01 (1d),
446.01 (1k), 446.01 (1m), 446.01 (3), 446.035 and 446.04 (6), (7), (8), (9), (10) and
(11) of the statutes; **relating to:** unprofessional conduct by chiropractors.

Insert A:

Analysis by the Legislative Reference Bureau

Under current law, the Chiropractic Examining Board licenses and regulates chiropractors in this state. The Chiropractic Examining Board may investigate allegations of misconduct against a chiropractor and, following a hearing, may revoke, limit, or suspend the chiropractor's license.

Under this bill, the Chiropractic Examining Board must establish a Peer Review Panel of qualified chiropractors to evaluate a claim that a chiropractor provided inappropriate care to a patient. Under the bill, a finding by the Peer Review Panel that the chiropractor has provided a certain number of inappropriate services to a patient constitutes misconduct for which his or her license may be suspended or revoked.

In addition,
The bill also creates several new categories of misconduct for which a chiropractor may have his or her license suspended, including improper billing and falsifying an insurance claim. Under the bill, the Chiropractic Examining Board must suspend the license of a chiropractor who commits a third misconduct violation for no less than six months.

Finally, the bill prohibits sexual misconduct by chiropractors. Sexual misconduct is sexual contact, exposure, or gratification, sexually offensive communication, dating a patient under the chiropractor's professional care or treatment, or other sexual behavior with or in the presence of a patient under the

Ins A, cont

chiropractor's professional care or treatment. A chiropractor who commits sexual misconduct that does not involve physical contact with a patient shall have his or her license suspended for not less than 90 days. A chiropractor who commits a second act of sexual misconduct that does not involve physical contact or a first act of sexual misconduct that does involve physical contact shall have his or her license suspended for one year, and a chiropractor who commits a third act of sexual misconduct that does not involve physical contact or a second act of sexual misconduct that does involve physical contact shall have his or her license revoked. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 446.01 (1d) of the statutes is created to read:

446.01 (1d) "Generally accepted standards" means a level of diagnosis, care, skill, and treatment that is recognized by a reasonably prudent chiropractor as being appropriate under similar conditions and circumstances.

SECTION 2. 446.01 (1k) of the statutes is created to read:

446.01 (1k) "Patient" means an individual who receives treatment or services from a chiropractor or who has received treatment or services under the supervision, direction, or delegation of a chiropractor.

SECTION 3. 446.01 (1m) of the statutes is created to read:

446.01 (1m) "Peer review" means an evaluation based on generally accepted standards, by a peer review panel appointed under s. 446.035 (1), of the appropriateness, quality, and utilization of chiropractic health care provided to a patient.

SECTION 4. 446.01 (3) of the statutes is created to read:

446.01 (3) "Utilization" means the treatment or services provided to a patient, including the frequency and duration of the treatment or services.

SECTION 5. 446.03 (intro.) of the statutes is amended to read:

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1729/P1ins
PJH:cjs:cph

1 INSERT B:

2 SECTION 1. 446.01 (1L) of the statutes is created to read:

3 446.01 (1L) "Pattern of conduct" means more than one occurrence.

4 INSERT C:

5 6. The examining board may summarily suspend a chiropractor from the peer
6 review panel if the board finds that the reviewer is unqualified or if it finds that the
7 reviewer's methods or practices are unprofessional.

8 INSERT D:

9 (a) Billing for a service that was performed by a staff person without the
10 training required under ~~§ 446.02 (7) (b), 441.11 (3) (a) (1) (4), and the Wisconsin~~
11 ~~Administrative Code.~~ *by the laws of this state* *and* *add*

12 (b) A pattern of conduct in which a chiropractor bills a Current Procedural
13 Terminology Code in a manner inconsistent with the published standards of the
14 Current Procedural Terminology Code, The Current Procedural Terminology
15 Assistant, the Wisconsin Chiropractic Association, the American Chiropractic
16 Association, or the International Chiropractic Association. ✓

17 (c) A pattern of conduct in which a chiropractor bills for a service using a higher
18 level Current Procedural Terminology Code than the service that was actually
19 provided to the patient with the intent of obtaining unearned reimbursement. ✓

20 SECTION 2. 446.05 (2) of the statutes is amended to read:

21 446.05 (2) Upon Except as provided in sub. (3), upon application and
22 satisfactory proof that the cause of such revocation or suspension no longer exists,
23 the examining board may reinstate any license or registration suspended or revoked

1 by it. This subsection does not apply to a license or registration that is suspended
2 under s. 440.13 (2) (c) or that is revoked under s. 440.12.

History: 1977 c. 418; 1997 a. 191, 237.

3 **SECTION 3.** 446.05 (3) of the statutes is created to read:

4 446.05 (3) The examining board shall suspend the license of a chiropractor who
5 commits a third violation of s. 446.04 (1) to (11) for not less than 6 months.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1729/P2

PJH:cjs:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 446.03 (intro.), 446.05 (1) and 446.05 (2); and *to create* 446.01
2 (1d), 446.01 (1k), 446.01 (1L), 446.01 (1m), 446.01 (3), 446.035, 446.04 (6), (7),
3 (8), (9), (10) and (11) and 446.05 (3) of the statutes; **relating to:** unprofessional
4 conduct by chiropractors.

Analysis by the Legislative Reference Bureau

Under current law, the Chiropractic Examining Board licenses and regulates chiropractors in this state. The Chiropractic Examining Board may investigate allegations of misconduct against a chiropractor and, following a hearing, may revoke, limit, or suspend the chiropractor's license.

Under this bill, the Chiropractic Examining Board must establish a Peer Review Panel of qualified chiropractors to evaluate a claim that a chiropractor provided inappropriate care to a patient. Under the bill, a finding by the Peer Review Panel that the chiropractor has provided a certain number of inappropriate services to a patient constitutes misconduct for which his or her license may be suspended or revoked.

The bill also creates several new categories of misconduct for which a chiropractor may have his or her license suspended, including improper billing and falsifying an insurance claim. In addition, under the bill, the Chiropractic Examining Board must suspend the license of a chiropractor who commits a third misconduct violation, for no less than six months.

Finally, the bill prohibits sexual misconduct by chiropractors. Sexual misconduct is sexual contact, exposure, or gratification, sexually offensive

communication, dating a patient under the chiropractor's professional care or treatment, or other sexual behavior with or in the presence of a patient under the chiropractor's professional care or treatment. A chiropractor who commits sexual misconduct that does not involve physical contact with a patient shall have his or her license suspended for not less than 90 days. A chiropractor who commits a second act of sexual misconduct that does not involve physical contact or a first act of sexual misconduct that does involve physical contact shall have his or her license suspended for one year, and a chiropractor who commits a third act of sexual misconduct that does not involve physical contact or a second act of sexual misconduct that does involve physical contact shall have his or her license revoked.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 446.01 (1d) of the statutes is created to read:

2 **446.01 (1d)** "Generally accepted standards" means a level of diagnosis, care,
3 skill, and treatment that is recognized by a reasonably prudent chiropractor as being
4 appropriate under similar conditions and circumstances.

5 **SECTION 2.** 446.01 (1k) of the statutes is created to read:

6 **446.01 (1k)** "Patient" means an individual who receives treatment or services
7 from a chiropractor or who has received treatment or services under the supervision,
8 direction, or delegation of a chiropractor.

9 **SECTION 3.** 446.01 (1L) of the statutes is created to read:

10 **446.01 (1L)** "Pattern of conduct" means more than one occurrence.

11 **SECTION 4.** 446.01 (1m) of the statutes is created to read:

12 **446.01 (1m)** "Peer review" means an evaluation based on generally accepted
13 standards, by a peer review panel appointed under s. 446.035 (1), of the
14 appropriateness, quality, and utilization of chiropractic health care provided to a
15 patient or the conduct of a chiropractor alleged to have violated s. 446.04 (11).

16 **SECTION 5.** 446.01 (3) of the statutes is created to read:

1 446.01 (3) "Utilization" means the treatment or services provided to a patient,
2 including the frequency and duration of the treatment or services.

3 **SECTION 6.** 446.03 (intro.) of the statutes is amended to read:

4 **446.03 Reprimand; license revocation, limitation or suspension.**
5 (intro.) The Subject to s. 446.04 (11) (d), the examining board, by order, may
6 reprimand a licensee or registrant and may deny, limit, suspend or revoke any license
7 or certificate of registration if the licensee or registrant:

8 **SECTION 7.** 446.035 of the statutes is created to read:

9 **446.035 Peer review. (1) APPOINTMENT OF PEER REVIEW PANEL.** (a) The
10 examining board shall appoint a peer review panel of no fewer than 6 nor more than
11 12 members, pursuant to par. (b).

12 (b) A peer review panel may be selected from a list of nominees that is
13 submitted every 24 months by the Wisconsin Chiropractic Association. If the
14 Wisconsin Chiropractic Association fails to submit a list of nominees, the examining
15 board may solicit nominations for the peer review panel pursuant to a process
16 developed by the department.

17 (c) A nominee under pa. (b) shall meet all of the following requirements:

- 18 1. Possess a valid license to practice chiropractic in this state.
19 2. Have no less than 10 years in practice for a minimum of 20 hours per week
20 within the preceding 2 years of his or her nomination for the peer review panel or,
21 if the nominee is not in active practice at the time of his or her nomination due to a
22 disability, have at least 5 years of practice for a minimum of 20 hours per week prior
23 to the onset of his or her disability.

1 3. Be diploma eligible in a specialty that requires at least 300 hours of
2 postgraduate credit hours approved by the American Chiropractic Association or the
3 International Chiropractors Association.

4 4. Not have been subject to disciplinary action under this chapter or by any
5 regulatory or government agency.

6 5. Have completed an annual utilization review course approved by the
7 examining board.

8 6. The examining board may summarily remove a chiropractor from the peer
9 review panel if the board finds that the reviewer is unqualified or if it finds that the
10 reviewer's methods or practices are unprofessional.

11 (2) PROCEDURE. (a) A patient, a chiropractor, an insurer, or the examining
12 board may request a peer review, if the cost of the care in dispute for a course of
13 treatment exceeds \$500, by submitting a written request to the department and any
14 fee required under par. (b). Within 5 business days of submitting the request, the
15 patient, chiropractor, insurer, or examining board shall submit the following
16 documents to the department:

17 1. A written statement of the matter he or she wishes to be reviewed.

18 2. Clinical documentation relating to the course of treatment or the conduct he
19 or she wishes to be reviewed.

20 3. Any other information the patient, chiropractor, insurer, or examining board
21 wishes to include to support his or her request for review.

22 (b) The department shall charge a chiropractor or an insurer a requesting fee
23 of \$250. The department shall adjust the fee each year to reflect adjustments to the
24 U.S. consumer price index for all consumers, U.S. city average, as determined by the
25 U.S. department of labor.

1 (c) Upon receipt of the documents and fee specified under par. (a), the
2 department shall notify each patient, chiropractor, or insurer named in the request
3 for review. Within 10 business days of receiving notification that a review has been
4 requested, the patient, chiropractor, or insurer shall submit the following to the
5 department:

6 1. A written statement of response to the matter that is being reviewed.

7 2. Clinical documentation relating to the course of treatment or conduct that
8 is being reviewed.

9 3. Any other information the patient, chiropractor, or insurer wishes to include
10 to support his or her response.

11 (d) No patient, chiropractor, or insurer may appear before the peer review panel
12 or a peer reviewer.

13 (e) The department shall remove identifying information regarding a
14 chiropractor named in the request for review and, within 5 business days of receipt,
15 shall forward all of the documents received under pars. (a) and (c) and payment of
16 \$235 to a peer reviewer chosen at random from the peer review panel. The
17 department shall adjust the fee each year to reflect adjustments to the U.S. consumer
18 price index for all consumers, U.S. city average, as determined by the U.S.
19 department of labor. A peer reviewer chosen under this paragraph or par. (h) may
20 not have a material professional, familial, or financial interest during the 12 months
21 preceding his or her performance as a peer reviewer relating to a patient,
22 chiropractor, insurer, or any agent or affiliate of a patient, chiropractor, or insurer
23 named or involved in the peer review request.

24 (f) Within 30 business days of receiving the documents specified in par. (e), the
25 peer reviewer shall make a determination of the quality, appropriateness, and

1 utilization of the chiropractic services rendered to the patient. The peer reviewer
2 shall determine that the chiropractor acted unprofessionally if he or she finds that,
3 applying generally accepted standards, 50% or more of the chiropractic services
4 identified in the request for peer review were inappropriate, unnecessary, or of
5 substandard quality. The peer reviewer shall remit his or her findings to the
6 department and the department shall issue a copy of the findings to each patient,
7 chiropractor, or insurer named in the request and to the examining board.

8 (g) Upon receipt of the peer reviewer's findings, a patient, chiropractor, insurer,
9 or the examining board may request an appeal. The person requesting the appeal
10 shall submit a written request to the department and pay a fee of \$750.

11 (h) Upon receipt of a request for appeal and the fee specified in par. (g), the
12 department shall forward all of the documents received under pars. (a), (c), and (f)
13 and a payment of \$235 each to 3 additional peer reviewers chosen at random from
14 the peer review panel. The department shall adjust the fee each year to reflect
15 adjustments to the U.S. consumer price index for all consumers, U.S. city average,
16 as determined by the U.S. department of labor. The reviewers shall conduct a joint
17 review of the submitted materials. Each peer reviewer shall determine that the
18 chiropractor acted unprofessionally if he or she finds that, applying generally
19 accepted standards, 50% or more of the chiropractic services identified in the request
20 for peer review were inappropriate, unnecessary, or of substandard quality. Each
21 peer reviewer shall sign, with his or her name and address, and remit his or her
22 findings to the department. The department shall forward a copy of the joint review
23 to each patient, chiropractor, or insurer named in the request for peer review. The
24 department shall adopt the determination reached by a majority of the peer
25 reviewers appointed under this paragraph of the of the quality, appropriateness, and

1 utilization of the chiropractic services rendered to the patient or the conduct of the
2 chiropractor.

3 (3) CIVIL LIABILITY. A member of a peer review panel is immune from civil
4 liability for a finding, evaluation, recommendation, or other action he or she makes
5 or takes while performing a peer review under this section. This paragraph does not
6 apply if the member of the peer review panel acts in fraud, conspiracy, or malice.

7 (4) INSURANCE COVERAGE. No finding, evaluation, or recommendation reached
8 by a peer reviewer may be used to determine whether insurance coverage or
9 reimbursement is appropriate.

10 SECTION 8. 446.04 (6), (7), (8), (9), (10) and (11) of the statutes are created to
11 read:

12 446.04 (6) A determination under s. 446.035 that 50% or more of the
13 chiropractic services identified in a request for peer review were inappropriate,
14 unnecessary, or of substandard quality.

15 (7) Billing for a service that was not performed. This includes:

16 (a) Billing for a service that was performed by a staff person without the
17 training required by the laws of this state.

18 (b) A pattern of conduct in which a chiropractor bills a Current Procedural
19 Terminology Code in a manner inconsistent with the published standards of the
20 Current Procedural Terminology Code, the Current Procedural Terminology
21 Assistant, the Wisconsin Chiropractic Association, the American Chiropractic
22 Association, or the International Chiropractic Association.

23 (c) A pattern of conduct in which a chiropractor bills for a service using a higher
24 level Current Procedural Terminology Code than the service that was actually
25 provided to the patient with the intent of obtaining unearned reimbursement.

1 (8) Failure to collect a deductible or co-payment required by a patient's insurer.

2 This subsection does not apply if the patient has financial hardship and the
3 chiropractor documents the financial hardship.

4 (9) Falsifying a claim.

5 (10) A pattern of conduct that involves billing for a unit of service that was not
6 actually performed with the intent of obtaining unearned reimbursement.

7 (11) Sexual misconduct. (a) Under this subsection, a chiropractor engages in
8 sexual misconduct if he or she engages in sexual contact, exposure, or gratification,
9 sexually offensive communication, dating a patient under the chiropractor's
10 professional care or treatment, or other sexual behavior with or in the presence of a
11 patient under the chiropractor's professional care or treatment and a reasonably
12 prudent chiropractor under similar conditions and circumstances would find the
13 conduct unprofessional.

14 (b) Under this subsection, "contact violation" means any violation of par. (a)
15 that involves physical contact with a patient under the chiropractor's professional
16 care or treatment.

17 (c) Under this subsection, "noncontact violation" means any violation of par. (a)
18 that does not involve physical contact with a patient under the chiropractor's
19 professional care or treatment.

20 (d) 1. The examining board shall require a chiropractor who commits a first
21 noncontact violation under this subsection to attend training developed by the
22 department regarding sexual misconduct and shall suspend his or her chiropractic
23 license for not less than 90 days.

2. The examining board shall suspend the chiropractic license of a chiropractor who commits a 2nd noncontact violation or a first contact violation under this subsection for one year.

3. The examining board shall revoke the chiropractic license of a chiropractor who commits a 3rd noncontact or a 2nd contact violation under this subsection.

SECTION 9. 446.05 (1) of the statutes is amended to read:

446.05 Procedure for hearings. (1) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to the conduct of any licensed chiropractor who, it has reason to believe, violated s. 446.02 ~~or 446.03~~ (1), (6), (7), (7m), or (8) or committed any offense listed in s. 446.03. The person complained against may proceed to review any action of the examining board under ch. 227.

SECTION 10. 446.05 (2) of the statutes is amended to read:

446.05 (2) Upon Except as provided in sub. (3), upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the examining board may reinstate any license or registration suspended or revoked by it. This subsection does not apply to a license or registration that is suspended under s. 440.13 (2) (c) or that is revoked under s. 440.12.

SECTION 11. 446.05 (3) of the statutes is created to read:

446.05 (3) The examining board shall suspend the license of a chiropractor who commits a third violation of s. 446.04 (1) to (11) for not less than 6 months.

(END)